



City of Libby

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Comments from the City of Libby for Consideration by the EPA (January 11, 2010)

Introduction:

The City of Libby, Montana presents the following comments to the U.S. Environmental Protection Agency's (EPA's) Proposed Plans (PP) for Operable Units (OU) 1 and OU 2 of the Libby Asbestos Superfund Site.

Comment 1:

The City joins in the City-County Board of Health's Comments to the PPs for OU 1 and OU 2. The remainder of the City's comments relate to the PP for OU 1 (PPOU 1).

Comment 2:

On p. 7 the PPOU 1 states: "The [Remedial Action Objectives] for OU 1 are based on anticipated future use" and "EPA's goal is to protect public health or welfare or the environment from exposure to LA in a way that is consistent with the City's intended use of the property." The City assumes the PPOU 1 should have read "public health **and** welfare **and** the environment."¹ See CERCLA § 101(24) (definition of "remedial action").² With that assumption, the City supports this statement and goal.

Comment 3:

The best representation of the City's intended future use of the property is attached as Exhibit A. The Record of Decision (ROD) should specifically incorporate that Exhibit and provide that the engineering and design team will work closely with the City to insure the PPOU 1's commitment to a ROD and remediation consist with the intend use of the property. The City requests that the ROD reflect EPA's commitment to consult with the City on the engineering and design reviews at 30-60-90 percent completion and allow public comment at each phase, taking into consideration future use of the park.

¹ The PPOU 2 contains the same disjunctive instead of the intended conjunctive. See PPOU 2, p. 8.

² Compare when EPA may implement a remedial action (when the "public health or welfare or the environment" is threatened) with what that remedial action must accomplish (the protection of public health and welfare and the environment.). CERCLA § 101(24).

Comment 4:

On p. 7 the PPOU 1 states: "EPA will perform cleanup to provide protection to the public and the environment, but will not otherwise create improvements to the property." How EPA must or must not spend superfund dollars is governed by the statute and the appropriations of Congress. The City and its citizens will not ask EPA to exceed the authority given to it by Congress. The City expects to work closely with EPA in the design and implementation of the final remedy. That remedy must be consistent with the City's future planned use of the property (see Comment 2 & 3 above); such consistency will undoubtedly require some accommodation in the design phase of the remedy for that future planned use.

The City does find the insertion of such a gratuitous comment in the PPOU 1 to demonstrate a certain inappropriate hostility towards the citizens of Libby and their city government. It seems EPA views the citizens of Libby as trying to take more than they need in superfund resources. Given the unprecedented toll the asbestos contamination has taken on the health and lives of the citizens of Libby, if they had such an attitude, it would be understandable and should be met with sympathy, not ridicule. However, given the circumstances, the citizens have demonstrated an admirable restraint in their response, a restraint that should be recognized, and lauded by EPA, not criticized with snide comments in the PPOU 1.

Comment 5:

The City understands there is an ongoing debate as to which fibers (what minimum lengths) should be counted and the method by which they should be counted. (See Comments of City-County Board of Health). The City also understands that the activity-based sampling (ABS) conducted in the Libby area does not show a clear correlation between airborne exposure rates and concentration in the media at issue. In other words, at this time, there is not a consensus on which fibers to count, how to count them, or where they are coming from. In the face of all that uncertainty, the City is concerned with the viability of EPA's approach to the remediation of OU 1. In particular, if the source and hence pathway of all exposures are not known, as shown by the results of the ABS, EPA cannot accurately claim that it knows that the selected remedy will sever those unknown pathways. Until there is a consensus as to which fibers to count, how to count them, and where they are coming from, any remedy selected for any OU can only be viewed as interim, not final.

Therefore, the City requests no ROD be issued. If a ROD must be issued from the PPOU1 the City requests that it be an Interim ROD. Once those unknowns are determined, then the remedy selected and implemented by the Interim ROD could be reexamined to determine if it adequately protects the public's health, welfare and the environment. If the then in place remedy provides that protection, it can be determined to be a final remedy. If, however, the remedy in place is determined not to be protective, a

new or supplemental remedy would need to be put in place. While the five-year review process of selected remedies by EPA could accomplish the same result, an affirmative obligation to reexamine an interim remedy would provide better acceptance by the community.

Comment 6:

The PPOU 1 does not detail the depth to which surface soil will be removed. To provide the best severance of the most obvious exposure pathway, the ROD should provide explicitly that in areas where no soil removal has taken place, the surface soil should be removed to a depth of 18 inches, with a placement of an 18 inch cap of soil followed by the placement of a surface cap consistent with Exhibit A. In removing those 18 inches or in later excavations at the site, all visible vermiculite should be followed and removed completely regardless of the depth.

Comment 7:

The PPOU 1's preferred remedy contains expected O & M costs of nearly \$1 million. There must be an adequate reserve set aside by EPA and/or MDEQ to pay for these O & M costs. The City cannot and will not be responsible for these O & M costs and the ROD should be explicit in who is to pay for those costs and from where that money is to come.

Comment 8:

The PPOU 1's preferred remedy assumes some Institutional Controls. The City is concerned as to the costs of the design, adoption, implementation and enforcement of these IC's. EPA should estimate these costs using the best available version of its *Local Government Planning Tool to Calculate Institutional Control Costs for Sites*. That same tool should be used to calculate the costs of maintaining any engineering controls. EPA and/or MDEQ must ultimately be responsible for these costs.

Comment 9:

The PPOU 1's preferred remedy assumes some Institutional Controls. As the property owner and the local government with general land use regulatory authority over the site, the City expects to take a lead role in working with EPA on the design, adoption, implementation and enforcement of those ICs. The ROD should reflect EPA's understanding of that fact.

Comment 10:

As part of its future plans for the site, the City plans to relocate the City Service Road for safety reasons in accord with MDOT advice. EPA's design and implementation of its selected remedy must be consistent with that relocation.

Comment 11:

The EPA has to ensure that all pathways of exposure have actually been closed by implementation of the selected remedy at OU 1. Any fibers found after the remedy is in place would constitute failure of the remedy, since there are no toxicity studies to base a safe exposure level upon.

Comment 12:

EPA has stated that the exposure pathway opened by erosion of the boat ramp gravels caused by EPA contractors leaving the wet well pump on has been closed. This statement is made even though visible vermiculite remains in the boat ramp after ERS actions. While visible vermiculite may not necessarily mean LA is present, this statement was made without ANY testing. In Libby, LA is associated with vermiculate to such a degree that when vermiculite is visibly present, Libby Amphibole (LA) should be assumed to be present unless testing (using consensus methods – see Comment 5) shows otherwise. Our public park has to be clean, as every square inch of this property will be a specific use area, designed for use by children. Visible vermiculite in a public park is unacceptable.

Comment 13:

Soil testing is not the best available methodology for exposure determination. The best available methodology requires air testing after the source media is disturbed in a manner consistent with the foreseeable use of the area. ABS, using the best analytical tools available and consensus methods, is necessary to protect human health in this public park. This testing must be extensive and specific to the future use as a public park. The ROD must contain post-remedy implementation ABS to ensure the effectiveness of the remedy. The ROD must also contain post-remedy implementation public health studies to ensure the effectiveness of the remedy at no cost to the City.

Comment 14:

The selected remedy for OU 1 must be durable and effective. Ants and other insects, worms, rodents and other burrowing creatures will be bringing contaminant to the surface on this site. Without toxicity studies to base a safe exposure level upon (*see* Comment

13) and with the site being used as a public park, the ROD must require the party responsible for O & M (not the City, *see* Comment 7) to test the integrity of the cap every year and take measures to protect the cap, including the final cover used in the boat ramps, rip-rap used in areas prone to erosion, and roots of trees and shrubs used on the site.

Comment 15:

Given the above comments which list City concerns with the accuracy of sampling and analysis, given there is yet to be established the lowest level of acceptable, minimal exposure risk to LA over a life time, given that OU1 has been and possibly remains a site of serious LA contamination, we are concerned about the actual safety of the David Thompson Search and Rescue Building. Although EPA evaluation of cancer risks from exposure to indoor air at this building indicate by EPA's data that there is no risk to volunteers, we have the following concerns. This evaluation is for cancer risk and not for NMRD (non-cancer diseases) which is the most prevalent of LA related disease. As noted in the Final Remedial Investigative Report 6.6.2, "the EPA has not yet developed national guidance for evaluating the risk of non-cancer effects from inhalation exposure to asbestos...it should not be presumed that cancer risk is the 'risk driver' at Libby OU1 or other parts of the Libby Site." Also in 6.6.3 the EPA admits that current methods for estimating cancer risks include data on chrysotile and that some data suggests that LA is somewhat more potent than chrysotile and that therefore, "risk estimates based on this method may tend to be somewhat low at OU1." Also, "it is anticipated that non-cancer risks may be of similar or possibly even greater concern than cancer risks."

We wish to be absolutely certain of the safety of our Search and Rescue volunteers. We do not feel confident at this time that the EPA can with certainty, given the questions about sampling methods and analysis and the lack of any final toxicity studies, state that there is no concern. We propose that once the contaminated soils in the vicinity of the DTSAR building are remediated, that the building is again tested with ABS sampling using only the most accurate analysis (TEM). These results will be completed and announced when the EPA toxicity study is finalized. If these new tests coupled with the latest data on LA indicate a concern with DTSAR, we request that the building be cleaned or removed and rebuilt at a site proposed by the City's plan if unable to be cleaned to protect public health.

Comment 16:

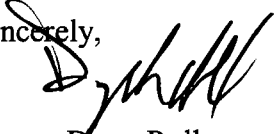
At this point in time, the City has little confidence in EPA's current testing and clean-up procedures. The City needs to know when clean is protective of public health. The City is frustrated with the lack of consistent clean-up techniques and a constant change in leadership with a subsequent loss of institutional knowledge.

The EPA's use of outdated sampling techniques to detect the LA and the one-size-fits-all clean-up procedures dealing with asbestos do not work with Libby's form of asbestos.

EPA must begin using the most current science and detection methods to assure a proper cleanup. The City is frustrated over the toxicological studies—from starting years too late; the use of animal studies instead of human exposures; and using worker exposures instead of the cumulative effects of exposures to the City's citizenry, especially our children.

The City is asking EPA to please delay the ROD on OU1 and OU2, or an interim ROD, until the City better understands the toxicity of LA and develops the proper clean-up process.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Roll", written over the word "Sincerely,".

Mayor Doug Roll
City of Libby

Exhibit A



Scale: 1"=60' @ 24x36" Sheet Size

Design Alternative

Riverfront Park

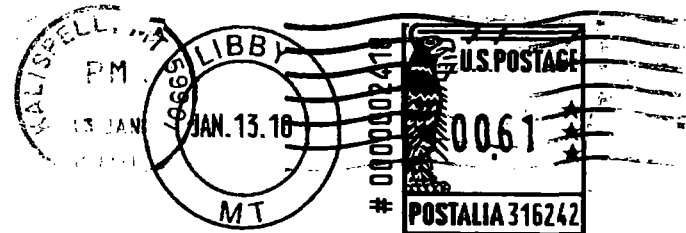
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